

JIM IRVIN
COMMISSIONER-CHAIRMAN

RENZ D. JENNINGS
COMMISSIONER

CARL J. KUNASEK
COMMISSIONER



ARIZONA CORPORATION COMMISSION

JACK ROSE
EXECUTIVE SECRETARY

MICHAEL G. BURTON, SR.
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: accsec@ccsd.cc.state.az.us

July 22, 1998

Judith L. Shandling, Esq.
Shereff, Friedman, Hoffman & Goodman
919 Third Avenue
New York, N.Y. 10022-9998

RE: UAM Trust Company
A.R.S. § 44-1842

Dear Ms. Shandling:

On the basis of the facts set forth in your letter of June 18, 1998, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter.

It is the opinion of the Division that the activity set forth in your letter is the type of activity that would be exempt under A.R.S. §44-1844(A)(14) since the plans involved in the collective trust are qualified under the Internal Revenue Code and are subject to the protections of the Employee Retirement Income Security Act of 1974. Consequently, the Division will not require UAM Trust Company's employees to register as dealers or salesmen in this particular circumstance. As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act. The anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

A handwritten signature in cursive script that reads "Michael G. Burton, Sr.".

MICHAEL G. BURTON, SR.
Director of Securities

MGB:sjd
Attachment

SHEREFF, FRIEDMAN, HOFFMAN & GOODMAN, LLP

919 THIRD AVENUE
NEW YORK, N. Y. 10022-9998

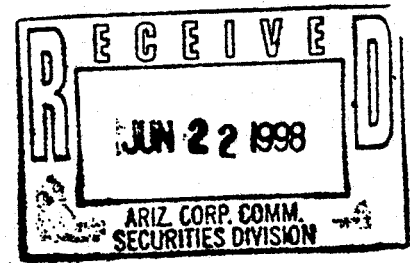
TELEPHONE (212) 758-9500
FACSIMILE (212) 758-9526
TELEX 237328

JUDITH L. SHANDLING
DIRECT DIAL NUMBER
(212) 891-9459

June 18, 1998

FEDERAL EXPRESS

Michael G. Burton, Sr.
Director, Securities Division
1300 West Washington Street, Third Floor
Phoenix, AZ 85007-2996



Dear Mr. Burton:

This letter constitutes a request for confirmation that the Securities Division will not recommend enforcement action for violation of the Arizona Securities Act (the "Act") for the sale of and investment in interests (the "Interests") in a collective trust (the "Trust") established by and for which UAM Trust Company (the "Trust Company") is trustee.

Background

The Trust Company is chartered under the banking laws of Maryland and is subject to regulation and supervision by the Division of Financial Regulation of the Maryland Department of Labor, Licensing and Regulation. Trust companies in Maryland generally are subject to the same type of regulatory oversight that is imposed by the Office of Comptroller of the Currency on national banks and the Federal Deposit Insurance Corporation on state banks that accept insured deposits. Such regulation includes annual on-site inspections by state regulators and quarterly submission of financial information in a call reports format to the regulators. In fact, the Maryland statute recognizes the principles underlying federal bank regulations and Maryland has a long-standing practice of relying upon federal regulatory interpretation in construing state law and in providing guidance for state banking operations.

Michael G. Burton, Sr.

June 19, 1998

Page 2

The Trust

The Trust has been established by the Trust Company as a collective trust. The Trust may accept monies from (i) pension, profit sharing or other employee benefit plans which are qualified under Section 401(a) of the Internal Revenue Code of 1986 (the "Code"), which are exempt from tax under Section 501(a) of the Code, (ii) certain governmental and state employee plans as defined in the Code, or (iii) any other collective investment trust established under regulations of the Office of the Comptroller of the Currency or similar state law, or any insurance company separate account, where the assets consist exclusively of funds of employee benefit plans qualified under Section 401(a) of the Code or such governmental or state employee plans (the "Plans").

The Trust consists of several investment options (the "Funds"), ranging from a money market Fund to an international Fund. Each of the Funds is advised by an investment adviser affiliated with the Trust Company, subject, however, to ultimate investment management of the Funds by the Trust Company.

Arizona Plans

The Trust Company anticipates that a number of the Plans will permit employee participants to direct the investment of their Plan assets by choosing from a limited number of investment options selected by the Plan sponsors. Plans that permit Plan participants to make selections among the Funds will likely request that informational meetings be held to answer questions concerning the Funds and assist participants in completing and executing necessary paperwork. The informational meetings are not intended to promote any particular Fund.

Federal and State Securities Laws

The Interests are exempt from registration under the Securities Act of 1933, as amended (the "1933 Act"), pursuant to Section 3(a)(2) thereof. Accordingly, the Interests are not required to be registered in any state pursuant to Section 18(b)(4)(C) of the 1933 Act. In addition, if Arizona decides that registration of UAM Trustco and its employees is not required in connection with the offer and sale of the Interests to Plans in Arizona, we believe that decision will be consistent with the regulatory scheme adopted by the vast majority of states. This belief is based on a review of various state statutes and regulations.¹ In conducting our review, we

¹Our conclusions with regard to the laws of the various states are based on a review of unofficial compilations of state securities laws and regulations, if any, relating to broker-dealer licensing or registration and certain exemptions therefrom in the various states. Accordingly,

Michael G. Burton, Sr.

June 18, 1998

Page 3

looked for states which (i) exclude a trust company from the definition of broker-dealer or (ii) permit a person not registered as a broker-dealer to effect securities transactions with specified institutions, including pension or profit-sharing trusts. We concluded that UAM Trustco and its employees are exempt from broker-dealer registration in more than 40 states.

Arizona Exemption and Precedent

Section 44-1844(A)(8)

Section 44-1844(A) of the Act provides that dealer-salesmen registration requirements do not apply to certain transactions, including

[t]he sale of securities to a bank, a savings institution, an insurance company, a dealer or an agency or instrumentality of the United States or of a state or to a person a principal part of whose business consists of buying securities.

§ 44-1844(A)(8).

We believe that transactions involving the Plans can be considered transactions with persons "a principal part of whose business consists of buying securities."

Section 44-1844 (A)(14)

Section 44-1844(A) of the Act provides additionally that dealer-salesmen registration requirements do not apply to transactions involving

[t]he sale or issuance of any investment contract or other security in connection with an employee's pension, profit sharing, stock purchase, stock bonus, savings, thrift, stock option or other similar employee benefit plan which meets the requirements for qualification under the United States internal revenue code.

§ 44-1844(A)(14).

the conclusions we reached should be regarded as a practical guide submitted for your general information and not as an opinion from us with regard to the laws of any jurisdiction.

Michael G. Burton, Sr.
June 19, 1998
Page 4

As set forth above, the Plans will meet the requirements for qualification under the Code and the Interests will be issued in connection with the Plans. We note that the Securities Division previously has granted no action relief in connection with offers and sales of participation interests in a collective trust for Plans. See A.G. Edwards Trust Company (July 1, 1996). See also, Invesco Retirement Trust and Invesco Trust Company (December 21, 1990) (cited in A.G. Edwards Trust Company). We believe such relief also should be granted with respect to the Interests.

Plan participants are afforded significant protections under the Employee Retirement Income Security Act of 1974 ("ERISA") in that the Plans must be trustee and otherwise administered in accordance with the strict mandates imposed by ERISA. UAM Trustco will be acting in a fiduciary capacity as trustee of the Trust and will be subject to these requirements, including the duty to be prudent in its investment activities and the duty to be prudent in the selection and continued appointment of investment managers, including the monitoring of the investment managers' investment activities, regardless of who the investment manager is and regardless of the self-directed features of a Plan. Moreover, UAM Trustco retains the ability to change investment managers. The fiduciary duties that exist in these arrangements provide sufficient protection to Plan participants so that they do not need the additional protection of the registration requirements under the Arizona Securities Act. The costs and cumbersome aspects of registration simply outweigh any additional benefits obtained from registration, and we believe this is recognized under federal and almost all state securities laws.

For the foregoing reasons we respectfully request assurance that enforcement action will not be taken in connection with the offer and sale of Interests to Plans located in Arizona by employees of UAM Trustco if neither UAM Trustco nor its employees are registered dealers or salesmen, respectively, with the State of Arizona.

A check for \$200 in payment of the filing fee is enclosed pursuant to §44-1861(L) of the Act.

Michael G. Burton, Sr.
June 18, 1998
Page 5

Should you have any questions or require further information, please contact the undersigned at (212) 891-9459 or Byron Spivack of this office at (212) 891-9425.

Very truly yours,

Judith Shandling
Judith L. Shandling

JLS:rrm
Encl.

cc: Lisa Kelley, Esq.
James Pappas

